

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

	)	
In the Matter of	)	
	)	ET Docket No. 05-247
Petition for Declaratory Ruling of	)	
Continental Airlines, Inc.	)	
	)	

To: The Office of Engineering and Technology

**COMMENTS OF  
PHOENIX SKY HARBOR INTERNATIONAL AIRPORT**

**I. INTRODUCTION**

Phoenix Sky Harbor International Airport ("Sky Harbor") is owned by the City of Phoenix, a municipal corporation of the State of Arizona. Sky Harbor served over 40 million passengers from July 1, 2004 through June 30, 2005 and handled 290,440 tons of cargo and mailed 43,388 tons. Over 25 passenger airlines and 11 cargo airlines operate out of Sky Harbor, and Sky Harbor is home to a large number of commercial tenants including Bank of America and Honeywell.

The Office of Engineering and Technology ("OET") has requested comments regarding a Petition for Declaratory Ruling (the "Petition") filed by Continental Airlines, Inc. ("Continental") in which Continental complains that the Massachusetts Port Authority ("Massport") has sought to prevent Continental from operating a "Wi-Fi" antenna in Continental's frequent flyer club lounge at Logan Airport. We file today in

support of the comments filed by Massport and Airports Council International – North America (“ACI-NA”).

For all the reasons cited by ACI-NA, we urge the FCC to rule in a way that recognizes the special circumstances arising in the airport setting. Airports are complex environments, and are highly dependent on local management for centralized coordination and oversight in balancing the needs of large numbers of tenants and ensuring the safety and security of the traveling public. As ACI-NA states in its comments, decades of experience have taught Sky Harbor and other airport proprietors that retaining control over their physical infrastructure is a critical management tool. We may not choose to exercise that control in every instance, but retaining the authority to do so is essential. This applies to communications infrastructure as much as to any other type of facility.

Also, it is important to note that the relationships in an airport are not typical tenant relationships. Sky Harbor makes no net profit from the airlines – the airlines purely pay cost recovery for the terminal buildings and airfield. Airlines occupy space at Sky Harbor on thirty day use agreements. These use agreements limit airlines rights to use their space to the provision of air travel. Except by approval of Sky Harbor, the airlines are prohibited from engaging in any appurtenant commercial activity for profit within the space owned by Sky Harbor that they occupy, including advertising, food/retail sales, and the sale of services. Similarly, the airline is prohibited from making any arrangements with a third party to conduct commercial services within the space they occupy. Based on the use agreements at Sky Harbor, airlines would be prohibited from

selling the service of “Wi-Fi”, and wireless companies cannot provide “Wi-Fi” at a fee on behalf of the airline.

Most importantly, Sky Harbor exists primarily to serve the traveling public. We are driven by passenger needs, and one of the critical needs we have recently identified is the ability for passengers to have access to wireless Internet service throughout our terminal facilities. To that end, we are in the process of implementing a “Wi-Fi” service to the public under a model that was carefully developed, after considering local conditions.

Finally, we note that there are significant legal and practical questions concerning the application of the Over-the-Air Reception Devices (“OTARD”) Rule in the airport context. Even if OET takes a different view of those questions, OET should either allow Massport to proceed under the “central antenna exception,” or under a waiver.

## **II. ANY ACTION BY OET SHOULD NOT RESTRICT AIRPORT’S ABILITY TO PROVIDE “WI-FI” SERVICE.**

Sky Harbor has already installed a telecommunications backbone throughout the airport and is currently in the process of installing wireless as an extension on this system. Sky Harbor plans to offer Internet access to the public for free. Separately, Sky Harbor is developing its own secure wireless network in support of airport operations, public safety, and security staff.

Sky Harbor has considered different business models to introduce “Wi-Fi” service and chose one adapted to local conditions. Sky Harbor has tried very hard to address the needs of all the stakeholders at the airport and to develop an approach that works for all



parties. If OET decides this case, that decision should not hinder the ability of airports to make different policy choices as they attempt to meet the needs of the different stakeholders. Any action by OET that would hinder the effective provision of that service would hinder our ability to serve the public.

### **III. OET MUST NOT INTERFERE WITH THE ABILITY OF AIRPORTS TO PROTECT THE SAFETY AND SECURITY OF PASSENGERS.**

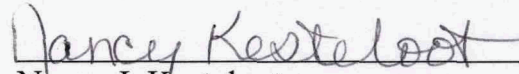
Sky Harbor also is very concerned that OET may restrict the ability of Sky Harbor and other airports to protect the safety and security of passengers. Massport has argued that its actions were protected under the safety exception to the OTARD Rule. Airports must have broad latitude in the safety area – it is simply impractical to expect that OET and the FCC can address airport safety issues on a case-by-case basis in a timely and effective fashion. Consequently, airports should be given wide latitude to apply the safety exception to the OTARD Rule. Continental and the other airlines, as well as other airport tenants, are extremely sophisticated and knowledgeable organizations; they do not need to be protected from their landlords in the way that the OTARD Rule suggests is appropriate for individual homeowners or apartment residents.

In addition, as ACI-NA points out, it is not enough for OET to simply say that unlicensed Wi-Fi frequencies should not be used for mission-critical applications. Not only are they being used for such purposes, but such use is likely to grow. Rather than fight a rear-guard action against this development, OET should encourage it, because in the end it is in the public interest.

## CONCLUSION

For the reasons noted above, Sky Harbor supports the comments of ACI-NA and Massport, and urges OET to deny the Petition.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Nancy Kesteloot", written over a horizontal line.

Nancy J. Kesteloot,  
Assistant Chief Counsel  
City of Phoenix Law Department  
200 West Washington Street,  
Suite 1300  
Phoenix, Arizona 85003-1611

Certificate of Service

I hereby certify that I have caused to be mailed this 28<sup>th</sup> day of September, 2005,  
copies of the foregoing Comments of the Sky Harbor, by first-class mail, postage prepaid,  
to the following persons:

Holden E. Shannon  
Senior Vice President  
Global Real Estate & Security  
Continental Airlines, Inc.  
1600 Smith Street – HQSVP  
Houston, TX 77002

Robert Edwards  
Staff Vice President  
System Operations  
Continental Airlines, Inc.  
1600 Smith Street – HQSVP  
Houston, TX 77002

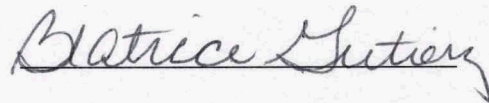
Donna J. Katos  
Managing Attorney – Litigation  
Thomas Newton Bolling  
Senior Attorney – Regulatory  
1600 Smith Street – HQSVP  
Houston, TX 77002

Henry M. Rivera  
Vinson & Elkins, LLP  
The Willard Office Building  
1455 Pennsylvania Avenue, NW  
Washington, DC 20004-1008  
*Counsel for Continental Airlines, Inc.*

Christine M. Gill  
McDermott Will & Emery  
Suite 1200  
600 13<sup>th</sup> Street, NW  
Washington, DC 20005-8087  
*Counsel for Massachusetts Port Authority*

Office of the Secretary\*  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20054  
Attn: Office of Engineering and  
*Technology, Policy and Rules Division*

\*Service by ECFS



Phoenix, Arizona

186592v1